

falling within exception 1 to s 300 of the Penal Code (Cap 224, 1985 Ed) could be made out on behalf of the applicant. We accepted the finding of the trial judges that when the appellant heard of the assault on Tan he felt a great deal of anger towards the deceased and was therefore provoked. It may well be (as counsel for the appellant contended) that this anger and provocation did not recede or abate when the appellant saw his 'foster father' in a bloody state and they similarly did not recede or abate during the confrontation when the deceased abused the appellant and the latter's mother in vulgar Hokkien. However, the deceased fled, obviously because he was outnumbered, and he was chased by no less than five persons, excluding the appellant, who then followed and also gave chase. We agree entirely with the finding of the trial judges that any provocation which had caused the appellant to lose his self-control would have ceased at that time when the deceased fled. Furthermore, again as the trial judges found, when the appellant caught up with the deceased, the latter was struggling on the ground defending himself against the assault of four or five persons and there was nothing which the deceased did which could be considered to constitute provocation to the appellant, taking into account the appellant's age and class of society from which he came.

In any event, we were in complete agreement with the trial judges that the appellant's repeated stabbings of the deceased were wholly disproportionate to any provocation that could have been caused to the appellant. The appellant inflicted no less than five stab wounds on the deceased, two of which were fatal, while the deceased was lying on the ground struggling against the assault of four or five persons. Such stabbings were not the acts of a man provoked but one bent on revenge. It has been held by this court in *Vijayan v PP*¹ that in considering the defence of provocation falling within exception 1 to s 300 of the Penal Code (Cap 224, 1985 Ed) one must compare the act of provocation with that of retaliation — the 'reasonable relationship' between the two is an essential factor to be taken into consideration. The following passage of the judgment (delivered by Choor Singh J) at p 12 is most apt:

In our judgment, under our law, where an accused person charged with murder relies on provocation and claims the benefit of exception 1 of s 300, the test to be applied is, would the act or acts alleged to constitute provocation have deprived a reasonable man of his self-control and induced him to do the act which caused the death of the deceased and in applying this test it is relevant to look at and compare the act of provocation with the act of retaliation.

To put it in another way, it must be shown distinctly not only that the act which caused death was done under the influence of some feeling which took away from the accused all control over his actions, but also that the feeling had an adequate cause and here again it is relevant to compare the provocative act with the act of retaliation. If it

A can reasonably be said that these two acts more or less balance each other in the sense that the proved provocation could have driven a reasonable person to do what the accused did, then he is entitled to the benefit of this exception. On the other hand, if the act of retaliation is entirely out of proportion to the provocation offered, the plea of grave and sudden provocation fails. It is needless to add that the matter must be considered objectively and that the burden is on the accused to establish provocation on a balance of probabilities. *Jayasena v R* ([1970] 1 All ER 219).

B In conclusion, we found that there was nothing which showed that the judgment of the trial judges was unsound or that their interpretation of the facts or conclusions was wrong. In our judgment, the conclusions were undoubtedly correct. A person who has been provoked by the news of an assault of another person, whether that person be his 'foster father' or otherwise, and thereafter takes it upon himself to avenge the assault must accept the serious consequences of his own act of vengeance and cannot escape the penalty under the law. The appeal was accordingly dismissed.

D *Appeal dismissed.*

Solicitors: *Leo Fernando.*

Reported by *Mathavan Devadas*

E

Tan Cheow Bock v Public Prosecutor

COURT OF CRIMINAL APPEAL (SINGAPORE) — CRIMINAL APPEAL NO 17 OF 1990
F YONG PUNG HOW CJ, THEAN AND CHUA JJ
3 OCTOBER 1991

Criminal Law — Murder — Intention to cause bodily injury sufficient in the ordinary course of nature to cause death — Burden of proof — Penal Code (Cap 224, 1985 Ed), s 300(c)

G The appellant was charged in the High Court for the murder of one Chia Chun Fong. The appellant was the deceased's neighbour. The medical evidence revealed that the fatal injury was a knife wound in the deceased's mouth. The appellant's statements recorded under s 122(5) and (6) of the Criminal Procedure Code (Cap 68, 1985 Ed) were admitted in evidence. In the statements, the appellant admitted that he went to the deceased's home to rob her. He further admitted to administering the knife wounds but claimed that he did so to stop the deceased from shouting. The appellant called medical evidence to show that the fatal injury was very difficult to inflict. The appellant was convicted as charged and he appealed.

Held, dismissing the appeal:

I (1) To bring the case under s 300(c) of the Penal Code (Cap 224, 1985 Ed) the prosecution must prove the following:

- (a) that the accused did an act which caused the death of the deceased;
- (b) that the said act was done with the intention of causing bodily injury;

- (c) that the injury caused was intended and was not accidental or otherwise unintentional and was sufficient in the ordinary course of nature to cause death.

(2) There was nothing to show that the trial judges were wrong in finding that the appellant had intentionally caused the injury which caused the death of the deceased.

Cases referred to

- 1 *Virsa Singh v State of Punjab* AIR 1958 SC 465 (folld)
- 2 *Mohamed Yasin bin Hussin v PP* [1976] 1 MLJ 156 (not folld)
- 3 *PP v Visuvanathan* [1978] 1 MLJ 159 (folld)
- 4 *Jagrup Singh v State of Punjab* AIR 1981 SC 1552 (refd)

Legislation referred to

Criminal Procedure Code (Cap 68, 1985 Ed) s 122
Penal Code (Cap 224, 1985 Ed) s 300(c)

Edmond Pereira for the appellant.

Ang Sin Teck (Deputy Public Prosecutor) for the respondent.

Cur Adv Vult

Yong Pung How CJ (delivering the judgment of the court):

The appellant was convicted on the following charge and was sentenced to death:

That you Tan Cheow Bock on or about 23 September 1980 at about 8.50am at No 32 Maria Avenue, Singapore committed murder by causing the death of one Chia Chun Fong alias Jenny and you have thereby committed an offence punishable under s 302 of the Penal Code (Cap 224).

The facts were as follows. The deceased was a housewife and she lived at No 32 Maria Avenue ('the house'). The other occupants of the house at that time were her husband Ong Ka Teck ('Ka Teck'), his parents Ong Chin Ho and Cheong Lye Hwa ('Lye Hwa'), the deceased's husband's brother Ong Ka Thiam ('Ah Yee') and the deceased's husband's sister Ong Hong Luan ('Hong Luan'). Prior to moving to the house, the family was living in Kampong Chai Chee. The appellant was their neighbour and he knew Ka Teck and Ah Yee. The appellant used to visit Ah Yee.

In the morning of 23 September 1980, Ong Chin Ho left early for Chai Chee market where he worked as a butcher. Ka Teck, Ah Yee and Hong Luan left for work together at about 6.45am. Lye Hwa left for the Chai Chee market at about 7.40am. The deceased was asleep. Before leaving, Lye Hwa closed the front and back doors of the house.

At about 8.20am, Iris Teresa Gomes ('Iris') who lived at 24 Maria Avenue took her grandson to the house for Lye Hwa to babysit. The front door was closed and she called to the deceased who then opened the door and took her grandson in. Iris told the deceased to feed her grandson with the milk Iris had

prepared. As Iris was leaving, the deceased asked her to leave the front door open as the deceased wanted to let some breeze in. Iris then left.

At about 9am, Lye Hwa returned from the market. The front door was open, but she did not suspect that anything was wrong and went to the kitchen to put away the food. She saw the baby's bottle on the dining table and proceeded upstairs. The baby was asleep on the bed in Lye Hwa's bedroom. When she looked into the deceased's bedroom, the deceased was not there. Neither was she in the bathroom.

As she entered Ah Yee's room, she saw the deceased lying motionless on the floor in a pool of blood. She called to the deceased but there was no response, not even when she shook the deceased. She saw a piece of wood sticking out of the deceased's mouth. On closer examination, it was the handle of a knife. She tried to pull it out but could not. She then shouted to a neighbour Chan Chee Meng that the deceased had committed suicide. Chan Chee Meng came over. She also called Iris to take her grandson home. A passing police car was hailed. At 9.07am an ambulance arrived. The deceased was pronounced dead.

Professor Chao Tze Cheng, senior forensic pathologist of the Department of Pathology, Singapore General Hospital, was summoned to the house. He arrived there at 10.30am and after examining the deceased certified that death had occurred at least two hours prior to his examination. He then ordered the body to be removed to Singapore General Hospital mortuary where he conducted an autopsy on the following day, 24 September 1980. His autopsy report was admitted in evidence.

The autopsy report of Prof Chao Tze Cheng revealed that the deceased had suffered a number of injuries. In addition to bruises and abrasions on several parts of her body, a knife had been stuck in her mouth with only the handle remaining outside. The blade of the knife, which can be described as a kitchen knife, measured 14cm long and had gone into the mouth from left to right of the deceased's body in a slightly upward direction towards the back of the head.

Prof Chao expressed certain opinions regarding the injuries. He said that of the 16 external injuries on the deceased, 12 were bruises and abrasions about the head, face, neck, shoulder, mid-sternal, arms and knee regions. These injuries were consistent with being caused by a blunt force such as a punch. Some of them were also consistent with a fall on a hard surface. Of the remaining four injuries, two were pointed abrasions at the right clavicle region and the centre of the mid-sternal region respectively which in Prof Chao's opinion were caused by a sharp pointed instrument like the pointed end of the knife which was found stuck in the deceased's mouth.

Prof Chao testified that the fatal injury was the knife wound in the mouth. In his opinion and having regard to the direction in which the knife had moved when it entered the mouth, that is to say from left to right of the deceased's body and in a slightly upward direction towards the back of the head, the deceased must have been in a lying position on the floor with the assailant on the right of the deceased. Furthermore the tip of the knife had lodged quite firmly on to the back of the skull in the bone, and the cutting edge of the knife had cut into the bone on the left side of the foramen magnum and was wedged in the foramen magnum. This indicated that a great deal of force was used. In his opinion, the head of the deceased was lying on the floor which would provide the necessary resistance and which would have been absent if the deceased was upright or in a sitting position.

Prof Chao explained by reference to the knife retrieved from the deceased's mouth how it was possible for the knife to have gone through the soft tissue between the bone when entering through the narrow passage between the first vertebra and the base of the skull (the junction of the nasopharynx and the oropharynx) into the foramen magnum through which the left and right vertebral arteries from the heart go to the brain and join up as the internal carotid artery. In doing so the sharp cutting edge of the knife had cut the left vertebral artery into two halves which resulted in excessive bleeding and caused the death of the deceased. Death would have occurred in a matter of minutes.

Prof Chao further explained that the mouth was open when the knife entered her mouth. The clean entry the knife made through the mouth of the deceased caused only a small cut on the centre of the upper lip, a bruise on the centre of the lower lip and a superficial cut of 2.5cm on the surface of the tongue. The bruises and abrasions about the deceased's face and upper part of the body and two stab wounds on the deceased's genital region at the labia majora were not fatal. Prof Chao's evidence was that the deceased had died from haemorrhage from the single stab or thrust wound in the mouth.

Evidence from the police officers and other witnesses established that the deceased's bedroom (not the one in which her body was found) appeared to have been ransacked. Two drawers of the dressing table were open and there were what appeared to be bloodstains on the dressing table and cupboard. Certain items were found to be missing, namely, a gold chain with gold pendant, three gold bangles, a gold bracelet, several rings and a gold chain which the deceased had been wearing.

The police also examined the house for fingerprints. Some prints were found on the dressing table above referred to, telephone receiver and on the front door.

A These were photographed and sent to Inspector Lau Yeow Khoon who was an assistant registrar of criminals and the inspector in charge of the Fingerprint Section, Criminal Records Office, Criminal Investigation Department. That found on the front door was a left palm print, which was compared with a left palm print taken from the appellant after his arrest and both were identified to be the same. The report of Inspector Lau Yeow Khoon was admitted in evidence without objection or challenge from the defence.

B The prosecution adduced evidence from one Wong Woang who in early 1979 was a waitress at the New Anna Bar in Guillemard Road. She got to know the appellant who was a regular customer. During August 1980, the appellant placed horse bets through Wong Woang. On 20 and 21 September 1980, the appellant lost a total of \$1,962. The appellant never paid up.

C On 23 May 1987 the appellant was in the custody of the Royal Malaysian Police at Johore Bahru. He was handed over to Inspector Jaswinder Singh and Detective Corporal Abdul Rahman G Khan in Johore Bahru and was then brought to Singapore where he was duly arrested for the murder of the deceased and taken to the CID.

D The prosecution sought to admit in evidence two statements made by the appellant. They were the statements made to Inspector Akbal Ahmad on 23 May 1987 under s 122(6) of the Criminal Procedure Code ('the 122(6) statement') and the statement made to Inspector Jaswinder Singh on 17 and 28 May 1987 under s 121 of the Criminal Procedure Code ('the 121 statement'). The admission of the 121 statement was not objected to by the defence save for three sentences which the prosecution agreed to have blacked out. Accordingly the 121 statement with the three sentences blacked out was admitted in evidence under s 122(5) of the Criminal Procedure Code (Cap 68, 1985 Ed) ('the CPC') as P54 and acknowledged by defence counsel to have been voluntarily made by the accused. The statement read as follows:

...

H On 23 September 1980 at about 7.30am, I woke up and after brushing my teeth, left home for the coffee shop at the ground floor of my block for breakfast. After a cup of coffee, I left in a taxi for Maria Avenue. It was then about 8am. My intention was to borrow some money from the deceased's elder brother-in-law one 'Ah Yee'. I wanted to borrow money as I was then indebted to some illegal moneylenders and also in horse puntings. I know 'Ah Yee' since childhood days and we have been borrowing money from each other many times.

I At about 8.10am, I arrived at No 32 Maria Avenue and paid the taxi driver a sum of \$1.20. This place is a double-storey house. I then went up the flight of steps and reached the front and saw the iron grille gate was not locked. The inner wooden collapsible door was drawn but not locked. I

then knocked on the door and the deceased came and opened the door and invited me in. Once inside, I drew the wooden collapsible door and closed it. It is my normal practice to close the door when I visit this house. I then sat in the hall and asked for 'Ah Yee'. The deceased who is known to me as 'Annie' replied that 'Ah Yee' was not at home. She added that there was no one besides her in the house. I then asked 'Annie' whether she had some money on her. She replied that she did not have money. I then told her that I would rob her to get money. She appeared to be frightened on hearing these words and asked me whether it was true that I was going to rob her. I replied that it was true as I was indebted. This conversation took place at the entrance of the kitchen. I then pushed her in the region of her chest and she fell into the kitchen area. She then picked up a laundry board which was near the place she fell, got up and struck me a few times with it by using both her hands. I managed to ward off the blows with my right hand. She then ran up the flight of steps and I went into the kitchen and grabbed a vegetable knife which was on the top of the lower kitchen cabinet, near the sink. I then went to the first floor after the deceased. As I entered 'Ah Yee's' room which is nearest to the staircase, suddenly the deceased hit me on the back of my head a few times. She was apparently hiding in this room and I was taken unawares. As soon as I was hit several times, I turned around and grabbed deceased's hair with my left hand and banged it [her head] on the wall several times. My right hand was then armed with the vegetable knife which I had grabbed earlier from the kitchen. After I had banged her head on the wall a few times, I let go my grip of her hair and she fell on the floor. She then shouted in the Hokkien dialect 'Catch the thief'. She was facing upwards when she fell. One side of her floral dress was lifted up then. I then squatted near her and plunged the knife which I had in my right hand at her thigh region, two or three times. I do not know the exact spots where the knife landed but it was somewhere at the thigh region. She screamed when I stabbed her. I was squatting on her left side when I stabbed her thigh region. She then sat up and was still shouting in the Hokkien dialect 'Catch the thief'.

[The next three sentences were deleted.]

Her eyes were still open then and the eye-balls fixed at my direction. She was motionless. I did not see blood at the mouth region where the knife landed but I could feel that it was stuck in the mouth. I did not make any attempt to pull it out but left it there. I became panic [sic] then. I did see blood at the thigh region. Subsequently I pulled off the gold chain with a jade pendant from the deceased's neck. I also saw two silver coloured rings on the floor. I believed they had dropped off from the deceased during the struggle. I took these items too. I then headed for the deceased's room. Here, I searched the bedside table drawers but could not find any valuables therein. Subsequently, I searched the unlocked wardrobe and stole three gold bangles and some other gold items which I cannot remember. I did not get any cash at all. As I was passing the deceased's mother-in-law's room, I saw a baby fast asleep on the bed. I did not enter this room. I then went down the flight of steps and left by the front wooden collapsible door. I did close the wooden door back before leaving. ...

In so far as the 122(6) statement was concerned, there was no allegation of inducement, threat, promise or assault in the recording of the statement recorded under s 122(6) of the CPC. There was, however, an objection

A that inculpatory statements were elicited from questions put to the appellant and that certain exculpatory portions were not recorded. [Those portions are emphasized below.] The trial judges were satisfied that the 122(6) statement had been accurately recorded and admitted it in evidence. The statement read as follows:

B The deceased's husband and father-in-law were our distant relatives. When I went to the deceased's house at some time past 8am that day, I was not armed with any weapon. The deceased knew me at the time. I pretended to look for the deceased's elder brother-in-law. The deceased told me that her brother-in-law was not in. When I notice that no one else around, I told the deceased, who was known to me as Annie, that I was there to commit robbery. The deceased then questioned me as to whether it was true that I was going to commit robbery. I told her that it was true because I was indebted to someone in horse betting. Immediately, I punched her on her chest. The deceased retreated into the kitchen and grabbed a wooden plank used for washing clothes and tried to hit me with it. I managed to ward off the blow. Thereafter I grabbed a knife from the kitchen table next to the refrigerator and told the deceased that if she tried to hit me again, I would stab her with the knife. Upon hearing this, she ran upstairs and shouted in Hokkien 'Catch the thief'. I also followed her upstairs. When I was at the upper floor, the deceased hit me on my right hand with the wooden plank she was holding. When I tried to ward off the further blow, the wooden plank came off from the deceased's grip. The deceased then started to shout in Hokkien 'Catch the thief' again. I became panicky and thrust the knife I was holding into the deceased's mouth so as to stop her from shouting further. I then ran down and out of the deceased's house. In the course of my escape, I saw the deceased's mother-in-law returning to the house. I do not now whether she saw me as well. I did not intend to kill the deceased. It was on the spur of the moment that I stabbed the deceased with the knife. I am pleading with the authority to be lenient with me as I am required to support an aged mother, wife and three children.

G The appellant gave evidence. In his examination-in-chief, he said that he knew the deceased, her husband and Ah Yee. He had known the deceased for slightly more than a year. He visited the family when he was free and had occasionally stayed overnight. On 23 September 1980, he went to the house some time after 8.30am to borrow money from Ah Yee. The door was closed but not locked. The deceased came to the second storey balcony and asked him to go in. When he went in, the deceased came downstairs. When he asked for Ah Yee, H the deceased said that he was not in. The appellant said that the deceased looked unhappy. He told the deceased that he needed to see Ah Yee because he had lost money on horse betting.

I The deceased then became angry and scolded the appellant and called him 'bastard' and 'son of a bitch' in Hokkien. When the deceased persisted in abusing him, he got angry and told her not to abuse his mother. When the deceased still continued to abuse him, he threatened to rob her but did not mean it. He only said that to frighten her. The deceased continued abusing

him and he told her that if she did not stop he would assault her. When she did not stop, he became angry and punched her on the chest. The deceased fell backwards and sat on the floor at the entrance to the kitchen. She then took hold of a washing board and started to attack him with it, screaming abuses and aiming blows at his head which he warded off with his hands. He then saw a knife on the kitchen cabinet on the left of the kitchen door which he took. The deceased ran upstairs. The appellant said he took the knife as he wanted to protect himself and also to threaten her. He put the knife into his trouser pocket and followed the deceased upstairs, as he wanted to ask her why she had assaulted him over 'such a small matter'.

When he reached the landing upstairs he did not see the deceased. He went towards the deceased's room which was on the far right. At the entrance to the room, the deceased who was inside it started assaulting him with the washing board. He defended himself with his hands and retreated into Ah Yee's room which was the room next to it. In Ah Yee's room a fight took place, with the deceased hitting him with the washing board and the appellant punching the deceased. During this scuffle the washing board fell to the floor. They then fought each other with their hands, in the course of which the deceased got hold of his neck with both her hands and was squeezing it. They then fell to the ground and both landed in a sitting position, with him on the deceased's right and more or less facing each other. The deceased still held her grip of his neck with both her hands and was pressing very hard. He then saw the knife which he had put in his trouser pocket earlier, lying on the floor near by. He took hold of it and told the deceased that he would stab her if she did not let go of his neck.

Throughout all this, the deceased was shouting and screaming 'bastard' and 'catch the thief'. When the deceased did not let go of his neck he said he stabbed her twice in the thighs. He then said the deceased immediately let go of his neck and grabbed his hair with both her hands. He then swung his left hand towards the deceased and at the same time thrust the knife upwards. He had swung the knife at the deceased because he was very angry. She was shouting 'catch the thief' when he was not committing robbery and this made him very angry. He said that it did not occur to him that he would hit any part of her body. He had no intention to hurt her, least of all to stab her in the mouth to stop her from shouting.

The appellant called Dr K Rajendran, a senior lecturer of the Department of Anatomy, National University of Singapore. His evidence was to show that, anatomically, the fatal injury was a very difficult injury to inflict, had one intended to inflict that particular injury and no other. However, Dr Rajendran conceded that,

A although the mouth is not a vulnerable area, in that it is not an access to any vital organ, a blow aimed at the general direction of the head with a sharp cutting instrument like the knife could result in a fatal injury as it could cut an artery in the neck. If the blow struck the nose it would not be fatal, nor would it be necessarily fatal if the blow pierced the eyes and entered the brain.

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The trial judges made the following findings:

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Basing ourselves on the forensic evidence of Prof Chao we find that the deceased could not have sustained injuries 15 and 16 as described by the accused in evidence. We cannot conclude whether he was on the deceased's left or right when these injuries were inflicted. We can and do find that the deceased was lying on the floor with her face upwards when injury 16 was inflicted. She may have begun to sit up or lifted her head off the floor when she was stabbed in the mouth. Certainly she was not in a sitting position on the floor when she was stabbed in the mouth. We do not accept the accused's evidence of being held first by the neck and then by the hair. No mention is made of this in the 121 statement (P54). Had this been true we have no doubt the accused would have mentioned it in the 121 statement (P54).

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We do not accept the accused's evidence given at the trial as being truthful either as to his reason for going to No 32 Maria Avenue on the morning of 23 September 1980 or as to his account of how the fatal injury (injury No 16) came to be inflicted on the deceased. As already noted, he explained the 121 statement (P54) by saying that he was unable to recall the events of that fateful day fully or accurately as they occurred about seven years before his arrest and he was called on to make the 121 statement (P54) within four days of his arrest. The voluntariness of that statement as with the cautioned statement (P17) was never put in issue. Yet when the accused was cross-examined he altered his position and maintained as he had with the cautioned statement (P17) in the trial within the trial, that the 121 statement (P54) had not been correctly recorded or what he had said had not been recorded or that he did not say what had been recorded. This shift in position was obviously intended to fit his evidence into the legal defences. However the evidence given at the trial cannot stand together with the forensic evidence of Prof Chao as we have already found. On the other hand the statements in the 121 statement (P54) of how injuries 15 and 16 were caused, even with the blacked out portions, are consistent with the forensic evidence of Prof Chao.

Accordingly, having regard to all the evidence, we find that the accused went to No 32 Maria Avenue on the morning of 23 September knowing fully well that only the deceased would be in, intending to get some money by any means, even to commit robbery if necessary. The deceased proved more difficult than the accused expected. A quarrel broke out. The accused punched the deceased. The deceased retaliated with a washing board but then broke off and ran upstairs. The accused armed himself with a knife and pursued her. Another struggle took place during the course of which the deceased fell to the ground. She started shouting and screaming 'Catch the thief' in Hokkien. The accused then stabbed her twice at her genitals and when she still continued shouting and screaming the accused stabbed her in the mouth so as to stop her from shouting further.

We have also considered the medical evidence and defence counsel's submission on the rarity of this particular injury and whether the accused could have intended to inflict that particular injury. It may well be that the accused did not intend to cause that particular injury in that particular way. There can be no doubt that the accused intended to cause serious injury about the face or neck of the deceased, even if we accept his evidence given at the trial, which we do not. What other intention could there be in thrusting a knife with a sharp cutting edge blade of 14cm with the force he did at the deceased's open mouth? Prof Chao has testified to the force and we saw for ourselves the tremendous power of the accused's right arm when he demonstrated how he had thrust the knife at the deceased.

On the facts of this case and as we have found them the accused did not hit the mouth of the deceased accidentally or unintentionally but thrust the knife (P10) into the mouth of the deceased with the intention of injuring her fatally.

In our judgment, the unusual nature of the fatal injury and the high degree of chance with which it was inflicted should not by those two factors alone exclude the formation of the culpable intention to inflict that particular injury within the meaning of para (c) of s 300 of the Penal Code. Otherwise, an unusual or unique way of inflicting a fatal wound would exclude the offence of murder. To determine the question of fact whether an accused had intended to cause the injury, that it was not accidental or otherwise unintended, all relevant circumstances must be considered and we have duly considered them in this case.

The trial judges also considered and rejected the defence of accident and defence of provocation.

At the hearing of the appeal, counsel for the appellant addressed the court on two broad areas, namely, the factual findings and the weight of the evidence, and the law on s 300(c) of the Penal Code (Cap 224, 1985 Ed) ('the Code'). On the evidence, he submitted that there were the following factual issues, namely, that the trial judges did not accept the appellant's evidence given at the trial as being truthful either as to his reasons for going to the deceased's house or as to his account of how the fatal injury came to be inflicted; that they failed to consider adequately that there were discrepancies in the statements of the appellant to the police; that they failed to appreciate or give adequate considerations to the fact that the fatal injury was a very difficult injury to inflict; that they failed to consider or gave little or no weight to the oral testimony of the appellant as to the circumstances leading to the fatal injury being inflicted; that they failed to give adequate or any consideration to the fact that the path of the knife was not intended and its entry into the skull through the foramen magnum would not have been intended nor foreseen; that they erred in their finding that they could not conclude whether the appellant was on the deceased's left or right when the injuries 15 and 16 were inflicted on the deceased; that they erred in their finding when they rejected the appellant's testimony that he was held by the deceased first by the neck and then by the hair.

A In our opinion, the trial judges did not err on the evidence at all. It is clear from the evidence that the appellant inflicted the fatal injury. Much time was spent on the cross-examination of Prof Chao on the probability of such an injury being inflicted. It may well be that to duplicate the precise path of the knife on another human being would be difficult, but this difficult is not of relevance. It is sufficient at this juncture to note that great force was used, that the knife was stuck in the deceased's mouth, and that Lye Hwa could not remove it from the deceased's mouth.

C On the law, the appellant's counsel submitted that the trial judges erred in failing to consider adequately that in order to bring the case within cl (c) of s 300 of the Code, the prosecution must prove that there was an intention on the part of the appellant to inflict that particular bodily injury which in the ordinary course of nature was sufficient to cause death. Counsel admitted that the case of *Virsa Singh v State of Punjab*¹ has been held by our courts to be the locus classicus in interpreting the provisions of cl (c) of s 300. It was clearly spelt out that the prosecution must prove the following facts before it can bring a case under s 300(c):

- (i) it must establish that a bodily injury is present;
- (ii) the nature of the injury must be proved;
- (iii) it must be proved that there was an intention to inflict that particular bodily injury, that is to say, that it was not accidental or unintentional, or that some other kind of injury was intended; and
- (iv) it must be proved that the injury of the type described, made up of the three elements set out above, is sufficient to cause death in the ordinary course of nature.

F Counsel submitted that *Virsa Singh's* case¹ was followed in *Mohamed Yasin bin Hussin v PP*.² In *Mohamed Yasin's* case,² Lord Diplock, in delivering the judgment of the Privy Council, said at p 157:

G Not only must the act of the accused which caused the death be voluntary in this sense; the prosecution must also prove that the accused intended, by doing it, to cause some bodily injury to the victim of a kind which is sufficient in the ordinary course of nature to cause death...

H *Mohamed Yasin's* case² was discussed in *PP v Visuwanathan*.³ In *Visuwanathan's* case,³ the trial judges were of the opinion that the dictum of Lord Diplock relied upon was factually appropriate in *Mohamed Yasin's* case² but it was not of universal application. The trial judges in *Visuwanathan's* case³ expressed the view that all the prosecution needed to prove was that where the appellant intentionally (and not accidentally) inflicted a bodily injury sufficient in the ordinary course of nature to cause death, cl (c) would apply. Under cl (c), once that intention to cause bodily injury was actually found to be proved, the rest of the enquiry ceased to be subjective

and became purely objective, and the only question was: whether the injury was sufficient in the ordinary course of nature to cause death. 'It is irrelevant and totally unnecessary to enquire what kind of injury the accused intended to inflict. The crucial question always is, was the injury found to be present intended or accidental.'

In the present case the trial judges held on the facts that the appellant did not hit the mouth of the deceased accidentally or unintentionally but thrust the knife into the mouth of the deceased with the intention of injuring her fatally. Counsel for the appellant submitted that the only evidence before the trial judges for them to base such a finding was the statement of the appellant recorded under s 122(6) of the CPC. Following *Virsa Singh's* case,¹ the court should construe strictly the interpretation of s 300(c) that is '... it must be proved that there was an intention to inflict *that* particular bodily injury, that is to say, that it was not accidental or unintentional, or that *some other kind of injury* was intended'. Counsel also referred us to *Jagrup Singh v State of Punjab*⁴ and also to the textbook *D Ratanlal and Dhirajlal's Law of Crimes*.

In our opinion, the law is not in doubt. *Virsa Singh's* case¹ is clear on s 300(c). V Bose J delivering the judgment of the Supreme Court said, at p 467:

In considering whether the intention was to inflict the injury found to have been inflicted, the enquiry necessarily proceeds on the broad lines as, for example, whether there was an intention to strike at a vital or a dangerous spot and whether with sufficient force to cause the kind of injury found to have been inflicted. It is, of course, not necessary to enquire into every last detail as, for instance, whether the prisoner intended to have the bowels fall out, or whether he intended to penetrate the liver or the kidneys or the heart. Otherwise, a man who has no knowledge of anatomy could never be convicted, for, if he does not know that there is a heart or a kidney or bowels, he cannot be said to have intended to injure them. Of course, that is not the kind of enquiry. It is broad-based and simple and based on commonsense: the kind of enquiry that 'twelve good men and true' could readily appreciate and understand.

To put it shortly, the prosecution must prove the following facts before it can bring a case under s 300 'thirdly';

First, it must establish, quite objectively, that a bodily injury is present;

Secondly, the nature of the injury must be proved. These are purely objective investigations;

Thirdly, it must be proved that there was an intention to inflict that particular bodily injury, that is to say, that it was not accidental or unintentional, or that some other kind of injury was intended.

Once these three elements are proved to be present, the enquiry proceeds further and,

Fourthly, it must be proved that the injury of the type just described made up of the three elements set out above is

A sufficient to cause death in the ordinary course of nature. This part of the enquiry is purely objective and inferential and has nothing to do with the intention of the offender.

Furthermore, in our opinion, the trial judges in *PP v Visuwanathan*³ also correctly analysed the position. At the risk of repetition, we adopt the following passage of their judgment at p 161:

B In our judgment for the application of cl (c) of s 300 of the Penal Code, all that the prosecution need prove is —

- 1 that the accused did an act which caused the death of the deceased;
- 2 that the said act was done with the intention of causing bodily injury;
- C 3 that the injury caused —
 - (a) was intended and was not accidental or otherwise unintentional; and
 - (b) was sufficient in the ordinary course of nature to cause death.

D There is no other requirement. In our opinion the submission of counsel for the defence based on Lord Diplock's dictum that 'the prosecution must also prove that the accused intended to cause some bodily injury to the victim of a kind which is sufficient in the ordinary course of nature to cause death' was untenable because such a requirement would make cl (c) otiose in view of the provisions of cl (a).

E Since there was nothing to show us that the trial judges were wrong in finding that the appellant had intentionally (not accidentally) caused the injury which caused the death of the deceased, and in applying s 300(c), we dismissed the appeal.

Appeal dismissed.

F Solicitors: *Assomull Pereira & Partners.*

Reported by *Mathavan Devadas*

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